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Locke on Express and Tacit Consent: Misinterpretations and Inconsistencies

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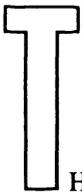


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## II. LOCKE ON EXPRESS AND TACIT CONSENT Misinterpretations and Inconsistencies

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THE SUBJECT MATTER of this essay is Locke's well-known discussion of consent in sections 116-122 of the *Second Treatise of Government*.<sup>1</sup> I will not be concerned to discuss the place of consent in Locke's political philosophy.<sup>2</sup> My concerns are somewhat narrower than this. I will simply be concerned to show that in important respects several recent discussions of Locke's political philosophy have misrepresented Locke's views on the subject of express and tacit consent. At the heart of these misinterpretations lie misunderstandings about the way in which landownership and the inheritance of land are related to express and tacit consent. I will show that these misinterpretations of Locke's views are, to a certain extent, indicative of internal strains that can be discovered in Locke's arguments.

My discussion will fall into four sections. In the first I will try to clarify Locke's views on the nature of express consent. I will show that Locke's views on this matter, when examined in their historical context, are not as obscure as some critics have suggested. In the second section I will examine Locke's views on the nature of tacit consent. I will be especially concerned to examine the relationship between landownership and express and tacit consent. In the third section I will look at Locke's views on the *inheritance* of land and how it relates to express

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and tacit consent. I will show that his views on this matter are not entirely consistent. In one passage Locke suggests that inheritance of land requires only tacit consent whereas, in another passage, he suggests that inheritance of land requires full membership of society and express consent. In the fourth and final section I will summarize the salient features of my interpretation of Locke's views on the subject of express and tacit consent. I will also briefly note interpretations of Locke's views that have been rejected in the course of this essay

## I

Perhaps the most serious obstacle to a proper understanding of Locke's views on express and tacit consent is the poor quality of Locke's presentation of his arguments. In order to remedy this shortcoming in Locke's discussion, I will rearrange his arguments in an effort to make his position somewhat clearer and easier to comprehend. I will begin with Locke's distinction between express and tacit consent.

At 119 Locke implies that there should be no difficulty in comprehending what express consent is. "The difficulty," he claims, "is what ought to be looked upon as tacit consent." Surprisingly, however, it is his view concerning express consent that recent commentators have found obscure. John Dunn, for example, claims that Locke's failure to give a clear account of what constitutes express consent is "a damaging lacuna" in his theory.<sup>3</sup> Similarly, Geraint Parry claims that "it is not clear how express consent is registered."<sup>4</sup>

Is Locke's notion of express consent as obscure as these remarks would seem to suggest? A fairly commonsensical interpretation of what constitutes "express consent" in this context is that it is a "declaration of a man's consent to make [himself] subject to the laws of any government" *by means of words or language*, either written or spoken. There is nothing mysterious about this interpretation; indeed, it is quite straightforward and literal. More important, the historical evidence suggests that it is one that Locke could reasonably expect his readers to make without requiring further comment from him. A look at the works of two philosophers whose writings on the subject of consent had considerable influence on Locke and his contemporaries will, I think, help us to understand Locke's position more clearly. First, these works give us some insight into the way in which Locke approaches this issue.

Second, insofar as these works constitute an important part of the philosophical context or framework within which Locke was writing, they give us a useful insight into the way in which Locke's audience would have understood his views on express consent. The works I am thinking of are Hobbes's *Leviathan*<sup>5</sup> and Pufendorf's *De Jure Naturae*.<sup>6</sup>

Peter Laslett's suggestion that the connection between the *Two Treatises* and Hobbes's writings has "often been distorted and exaggerated" is now widely appreciated.<sup>7</sup> However, although we may recognize that the *Two Treatises* should be viewed "as a deliberate and polemically effective refutation of the writings of Sir Robert Filmer,"<sup>8</sup> there is no escaping from the fact that, as Laslett puts it, "Hobbes and Locke were caught up within the living tissue which connects one intellectual generation with its successor in the same country, in the same small society."<sup>9</sup> How, then, would those familiar with Hobbes's writings understand the notion of "express consent"? Hobbes's remarks in *Leviathan* give us a fairly clear answer to this question. In Chapter 14 Hobbes describes two ways in which contracts may be undertaken. "Signs of contract," he claims, "are either express, or by inference." Hobbes continues, "Express, are words spoken with understanding of what they signify."<sup>10</sup> In Chapter 21 of *Leviathan*, Hobbes suggests that "the consent of a subject to sovereign power, is contained in these words, *I authorize, or take upon me, all his actions.*"<sup>11</sup> In the passage preceding this one Hobbes makes it clear how two distinct forms of consent may be registered:

For in the act of our submission, consisteth both our obligation, and our liberty; which must therefore be inferred by arguments taken from thence; there being no obligation on any man, which ariseth not from some act of his own; for all men equally, are by nature free. And because such arguments, must either be drawn from *the express words*, I authorize all his actions, or from the intention of him that submitteth himself to his power the obligation, and liberty of the subject, is to be derived, *either from those words (or others equivalent) or else from the end of the institution of sovereignty; namely, the peace of the subjects within themselves, and their defence against a common enemy.*<sup>12</sup>

In light of Hobbes's remarks, it seems reasonable to assume that contemporaries of Locke who were familiar with *Leviathan* would readily understand "express consent" as simply consent that is given by means of "words spoken with an understanding of what they signify."

Consideration of Pufendorf's remarks on the subject of consent provides further support for our interpretation. The influence of Pufendorf's writings on Locke is well documented. Thus, Laslett states,

of the writers [Locke] consulted when engaged on his book [*Two Treatises*], Samuel Pufendorf was perhaps of the greatest use to him. [Locke] took advantage of Pufendorf's arguments, he reproduced his positions, and he describes his major work [*De Jure Naturae*] "as the best book of that kind."<sup>13</sup>

What, then, were Pufendorf's views on the subject of consent? In *De Jure Naturae*, in a chapter entitled "Of the Consent Required in the Making of Promises and Pacts," Pufendorf argues that the "regular effect of Pacts and Promises is to abridge and restrain our liberty." There can, he claims "be no better argument to hinder a man from complaining of this burthen than to alledge, that he took it upon him by his own free will and consent" (Bk. III, Chap. 6, sect. i). Pufendorf goes on to argue,

This consent is usually declared by express signs, as by speaking, writing, nodding, etc. Yet sometimes without the help of any such tokens, it is sufficiently gathered from the nature and circumstances of the business. But in all these exceptions it is strictly required, that the state and condition of affairs be such as shall on every side conspire to ground the presumption. For otherwise it would be very hard measure to put a man under obligation, upon any little hint or symptom of agreement. And thus we see wherein the proper nature of tacit pact consists; that it happens, when we express not our consent by the signs generally made use of in human commerce and transactions [Bk. III, Chap. 6, sect. ii].

In section xvi of the same chapter, Pufendorf argues that words are "more perfect" signs of consent than those gathered "without the help of any such tokens." They are more perfect signs of consent because when they are used both parties are generally more likely to understand exactly what is being consented to and more likely to know exactly when consent has in fact been given.

In this way, it seems clear that any contemporary of Locke who was also familiar with Pufendorf's work would have little difficulty in understanding what Locke meant by "express consent." Furthermore, in light of Pufendorf's remarks, it seems likely that such a reader of the *Two Treatises* would understand why Locke thought that "the difficulty is what ought to be looked upon as tacit consent." The difficulty with tacit consent, as Pufendorf's remarks suggest, is that it is not obvious in what circumstances it should be assumed that such consent has been given. Ambiguities about what shall constitute tacit consent must be avoided. (Clearly, some fairly precise account of tacit consent is necessary in those circumstances in which a person is understood to be surrendering his or her natural liberty.) In short, my examination of

Pufendorf's views in *De Jure Naturae* lends further support to my (common-sensical) interpretation of Locke's notion of express consent, and explains why Locke thought that his readers should have little difficulty in understanding what he takes express consent to be.

It should be noted that arguments put forward in this section may be presented in either a stronger or a weaker form. Let us consider the stronger version first. The historical evidence, it is claimed, suggests that Locke would have been familiar with Hobbes's and Pufendorf's views on the subject of consent. The historical evidence also suggests that many, if not most, of Locke's audience would have been familiar with Hobbes's and Pufendorf's views on consent and that Locke may well have assumed some such familiarity. On this basis, and on the evidence of the text, it seems reasonable to conclude that Locke was using the notion of express consent in much the same way as other eminents of his own age: That is, by express consent he meant *verbal* consent. Accordingly, it is not surprising that Locke thought that his readers should have no difficulty in understanding what he meant by express consent. The weaker version of this argument runs as follows: An examination of Hobbes's and Pufendorf's remarks on the subject of consent gives us an insight into the way in which Locke's audience would have interpreted his notion of express consent. Locke's remarks suggest that his views on express consent are perfectly straightforward and in no sense peculiar or idiosyncratic. Accordingly, it seems reasonable to conclude that Locke was using the notion of express consent in a fairly orthodox way that his audience would easily understand: That is, by express consent he means *verbal* consent.

I do not, however, want to suggest that Locke's views on the subject of express consent are in all respects entirely adequate and clear. In particular, there is justice in Dunn's and Parry's criticism that it remains obscure in what *circumstances* Locke believes that express consent may be given. Nor is this a minor failing. For if it is not clear in what circumstances express consent may be given, it is not clear exactly *who*, according to Locke, may give express consent. Dunn's suggestion that the circumstances Locke has in mind may well have been those in which certain people in seventeenth-century England were required to take an oath of allegiance seems entirely plausible to me.<sup>14</sup> In this way, although there seems little reason to conclude that it is obscure what Locke thinks *constitutes* express consent, it must be granted that it remains obscure in what circumstances Locke thinks that express consent may be given. To this extent Locke's account of express consent is certainly inadequate.<sup>15</sup>

It may be argued that my interpretation of express consent as simply consent given by means of words (written or spoken) sheds little light on Locke's discussion. However, to this criticism I have two brief replies. First, this interpretation, rightly or wrongly, is one that other commentators have failed to offer.<sup>16</sup> Second, if my interpretation of Locke's views on express consent is correct, then other interpretations that have been offered must be rejected. For example, Parry suggests that "it is clear . . . that inheritance of an estate *is an act of express consent*"<sup>17</sup> If my interpretation of Locke's position is correct, then these remarks of Parry's are mistaken. I will return to this subject below.

## II

What, then, constitutes tacit consent according to Locke? Here again I believe that Locke's answer is relatively straightforward:

*Every man that hath any possession or enjoyment of any part of the dominions of any government doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government during such enjoyment as any one under it; whether this his possession be of land to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway [p. 119; my emphasis].*

In other words, in those circumstances in which a person owns land, or even resides within the boundaries of a given state, that person may be understood to have given tacit consent to obey the laws of that state.

Given that this is "what ought to be looked upon as tacit consent," we may now look at the other half of Locke's problem: "How far [does this tacit consent] bind?" Locke's answer to this question is two-fold. First, in section 120 Locke makes clear that whoever possesses land in a commonwealth must, on acquiring that land, acknowledge the jurisdiction of the government over that land.

Whosoever by inheritance, purchases, permission, or otherwise, enjoys any part of the land so annexed to, and under the government of that commonwealth, must take it with the condition it is under, that is, of submitting to the government of the commonwealth under whose jurisdiction it is as far forth as any subject of it.

Locke is here concerned, as Parry has suggested,<sup>18</sup> to show that his doctrine does not allow individuals to secede from society *with their land*; the jurisdiction of society over its territories is permanent.

Second, although the government's jurisdiction over its territories must be permanent, the same is not necessarily true of its jurisdiction over those who own land within its boundaries. The landowner, as such, gives only his or her tacit consent to the government (p. 121). In giving this tacit consent, he or she recognizes the jurisdiction of the government over his or her land and over him- or herself "as he dwells upon and enjoys" that land.

The obligation any one is under, by virtue of such enjoyment, to submit to the government, begins and ends with the enjoyment; so that whenever the owner, who has given nothing but such a tacit consent to the government, will by donation, sale or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other commonwealth, or to agree with others to begin a new one [p. 121].

In short, Locke regards possession of land as a paradigm case of tacit consent. As such it obliges the owner to recognize (1) the jurisdiction of the government over his or her property and (2) over him- or herself while he or she dwells upon that property.

Locke goes on to argue, however, that once a person has given express consent to a commonwealth, he or she "is perpetually and indispensably a subject to it." Merely living within the boundaries of a country, or even owning land in a country, does not make a person a member of society. "Nothing can make any man so, but his actually entering into it by positive engagement, and express promise and compact" (p. 122). Thus, it seems clear that, for Locke, possession of land does not, as such, make a person a perfect member of society. The only act that makes one a member of society is that of express consent.

In light of the account of express and tacit consent that has been put forward, I would like to note two points. First, Parry claims that "the only instance of tacit consent which . . . Locke supplies is that given by foreigners who settle in or visit a country."<sup>19</sup> My examination of Locke's arguments establishes that this claim is not true. For Locke, the paradigm case of tacit consent is ownership of land. Second, nothing that Locke states in sections 119-122 suggests any important connections between, on one hand, landownership and, on the other, express consent and perfect membership of society. It seems clear that on Locke's account not all landowners need be members of society who have given express consent,<sup>20</sup> and also that not all those who have given express consent (and are therefore full members of society) need be landowners. All that follows from Locke's remarks is that all landowners must *tacitly consent* to the jurisdiction of the government over their land and over themselves as they "enjoy" that land.

Contrary to this interpretation, however, C. B. Macpherson has argued that section 120 provides evidence for the view that "every full member is assumed to be a proprietor of land."<sup>21</sup> The passage he cites in support of this claim is the following:

Every Man, when he, at first, incorporates himself into any commonwealth, he, by his uniting himself thereunto, annexed also, and submits to the Community those Possessions, which he has, or shall acquire, that do not already belong to any other Government. For it would be a direct Contradiction, for any one, to enter into Society with others for the securing and regulating of Property: And yet to suppose his Land, whose Property is to be regulated by the Laws of the Society, should be exempt from the Jurisdiction of the Government, to which he himself the Proprietor of the Land, is a Subject.

I think that John Dunn puts the point very gently when he suggests that this passage "will not bear the weight put upon it" by Macpherson's interpretation.<sup>22</sup> The passage does not in any way suggest that all those who are full members of society are assumed to be landowners. Rather, it seems clear that it suggests only that one who joins society is assumed to place his or her land under the jurisdiction of that society (as long as it is not already under the jurisdiction of another government). In this way, contrary to Macpherson's claim, we may conclude that there is no reason to suppose, on the basis of Locke's remarks in 119-122, that those who have given express consent, and are therefore full members of society, are necessarily landowners.<sup>23</sup>

### III

I will now examine Locke's arguments concerning the relationship between the inheritance of land and express and tacit consent. I have noted that in sections 120 and 121 Locke is concerned to argue that any one who acquires land that is already under the jurisdiction of a government—whether he or she inherits it, buys it, or receives it as a gift—must be assumed to acknowledge the jurisdiction of that government over his or her land. In order to acquire land, therefore, one does not need to give express consent and become a full member of society; one is simply assumed to give tacit consent on acquiring that land. Locke's remarks in this context clearly assimilate the case of inheritance of land to that of purchasing land or receiving land in the form of a gift. In this passage, as I have noted, Locke is anxious to establish that

however a person may acquire land, that land must remain under the jurisdiction of the state. If the new owner does not accept this condition, then he or she should not buy, inherit, or receive the land in question. For our purposes, it is particularly important to emphasize that as the arguments in 120-121 stand, there is no reason to believe that according to Locke the inheritance of land requires express consent and membership of society. Rather, a weaker condition is put on the inheritance of land, one that assimilates it to other forms of acquiring land: That is, that the inheritance of land involves tacit consent.

In sections 116-117, by contrast, Locke places a much stronger condition on the inheritance of land: Namely, inheritance presupposes membership of society (and therefore *express* consent). In section 116 Locke is concerned to show that his claim that no man can be bound to any particular society by his father's compact can be reconciled with his claim that if a son is to inherit his father's land, he may be obliged by his father to become a member of that society.<sup>24</sup> The father, says Locke, may "annex such conditions to the land . . . as may oblige his son to be of that community, if he will enjoy those possessions which were his father's, because that estate being his father's property he may dispose or settle it as he pleases." Note that the father, on this account, does not place the weaker condition of section 120 (that the acquisition of land involves tacit consent) on his son's inheritance. Rather, a stronger condition is made: The son must, if he is to inherit this land, become a member of the community, and must therefore give express consent.

Why, in section 116-117, does Locke put a stronger condition on the inheritance of land than he puts upon it in 120-121? There is, I think, no good reason for demanding the stronger condition. Indeed, by differentiating between the stronger condition attached to the inheritance of land and the weaker condition attached to the other ways of acquiring land, Locke generates awkward difficulties for his doctrine of consent. In 117 Locke makes it clear that the reason fathers must attach certain conditions to the inheritance of their land is precisely that they must prevent the possibility of their sons seceding with their land.

Because commonwealths not permitting any part of their dominions to be dismembered, *nor to be enjoyed by any but those of their community*, the son cannot ordinarily enjoy the possession of his father but under the same terms his father did: by becoming a member of the society; whereby he puts himself presently under the government he finds there established as much as any other subject of that commonwealth [my emphasis].

There are several important features of this passage that should be noted. First, Locke here claims that commonwealths allow only "those of their community" to "enjoy" land within their boundaries. However, if this is to be understood as suggesting that only "perfect members" of society, who have given express consent, are permitted to own land, then it is obviously at odds with his subsequent remarks concerning the ownership of land in sections 120-121, in which he makes it clear that ownership of land does *not* require perfect membership of society. Second, Locke does not explain why fathers must require their sons to become members of society, and therefore give express consent, if they are to inherit land. If, as he suggests, he is concerned to rule out the possibility of individuals seceding with their land, then all that is required, as he shows at 120-121, is that the inheritor of land, like anyone else who acquires land, tacitly consents to the jurisdiction of the government. There is, therefore, no reason for the stronger condition to be attached to the inheritance of land. Third, by introducing the stronger condition on the inheritance of land, Locke puts the inheritance of land on a different footing in relation to consent than other forms of acquisition of land (e.g., purchase and gift). This is exactly what he does not do in section 120. If the stronger condition of 116-117 holds, those who inherit land must give express consent and be members of society, whereas those who purchase land or receive it as a gift need give only tacit consent and therefore need not be members of society. Furthermore, if those who inherit land must be members of society, they cannot be at liberty to leave society (contrary to the implication of 120-121). By contrast, those who purchase or receive land by gift need not be members of society and therefore have not necessarily lost their liberty to leave that society.

The introduction of these anomalies between the conditions attached to the acquisition of land by inheritance and those attached to the acquisition of land by other means has no justification. The stronger condition, in the case of inheritance, renders Locke's position very messy, if not positively inconsistent. Given that the stronger condition introduced at 116-117 is not required by Locke's argument, and is clearly at odds with his position at 120-121, I suggest that his demand for the stronger condition should be set aside as a serious mistake in his presentation of his views. All that Locke requires, as his remarks in 120-121 make clear, is that those inheriting land must recognize that they accept the land "with the condition it is under, that is, of submitting to the government of the commonwealth under whose jurisdiction it is

as far forth as any subject of it” (p. 120). This weaker condition meets Locke’s concerns about secession in 117 and is consistent with his general position in 119-122. In short, although Locke’s remarks in 116-117 suggest that the inheritance of land requires express consent (because it requires membership of society), his doctrine of consent is nevertheless rendered more consistent and more plausible if—*vis-à-vis* section 120—he is interpreted as demanding that the inheritance of land requires only tacit consent.

The difficulties noted above go some way toward explaining how certain misinterpretations of Locke’s views have been generated. For example, as we have seen, 116-117 does imply that the inheritance of an estate requires express consent. This may explain why Parry suggests “that the inheritance of an estate is an act of express consent.” However, even if we stick to Locke’s arguments in 116-117, nothing Locke says there implies that the inheritance of an estate *is an act of* express consent; it simply *requires* an act of express consent.<sup>25</sup> On any account, therefore, Parry’s interpretation must be rejected.

We have already noted Macpherson’s claim that “every full member of society is assumed to be a proprietor of land.” I have argued above that the passage Macpherson cites in support of this claim (i.e., 120) does not in fact support his interpretation. Locke’s arguments in 116-117, however, may lend some credence to this claim. For in that passage Locke does suggest that all those who inherit land must give express consent. Note, however, that Locke’s arguments—even in this passage—do not imply that all those who give express consent must be landowners. Thus, although Locke’s arguments in 116-117 do draw connections between this mode of acquiring land and full membership of society, they do not do so in the way that Macpherson suggests.

Our interpretation of Locke’s views on express and tacit consent may be summarized with the following points:

- (1) Express consent is a *verbal* declaration of a man’s consent to make himself subject to the laws of government.
- (2) Tacit consent is given by a man when he owns land, or even merely resides, within the boundaries of a state.
- (3) Where a man gives tacit consent, he recognizes the jurisdiction of the government over his land and over himself as he dwells upon that land.
- (4) A man who gives only his tacit consent remains at liberty to “quit” his land and leave that society. However, a man who gives his express consent thereby becomes a “perfect member” of society and loses his right to leave that society.
- (5) The jurisdiction of the government over its territories is permanent. The jurisdiction of a government over those who reside in its territories but have not

given express consent is not permanent; it lasts only as long as such residents dwell in its territories.

- (6) All landowners may be presumed to have given tacit consent to the government. However, it is not necessary to own land in order to give express consent and be a perfect member of society.
- (7) Locke's discussion of the conditions that are attached to the inheritance of land is not entirely consistent. In particular, in 120-121 Locke suggests that in order to rule out the possibility of people acquiring land (whether by inheritance, purchase, or gift) and then seceding with that land from the state, those who acquire land must be presumed to have given tacit consent and to recognize the jurisdiction of the government over their land. However, in 116-117 Locke attaches a stronger condition to the acquisition of land *by inheritance*: All those who inherit land, he claims, must be members of society and therefore (by implication) are required to give express consent.
- (8) Locke's position is rendered more consistent and more plausible if the demand for the stronger condition is set aside in favor of the weaker condition that attaches to all forms of acquisition of land.

It may also be useful to summarize the interpretations of Locke's views on express and tacit consent that have been rejected in this essay:

- (1) It has been argued that Locke's views concerning the *nature* of express consent are not as obscure as Dunn and Parry have suggested. (Although it is acknowledged that his views concerning the circumstances in which express consent is given remain obscure and inadequate.)
- (2) Contrary to Parry's suggestion, it has been shown that it is not true that "the only instance of tacit consent [Locke] supplies is that given by foreigners who settle or visit a country." Indeed, it has been argued that for Locke the possession of land is a paradigm case of tacit consent.
- (3) Contrary to Macpherson's suggestion that "every full member of society is assumed to be a proprietor of land," it has been established that one may, on Locke's account, give express consent and thereby become a full member of society without owning any land. Locke's remarks at 116-117 suggest that in order to *inherit* land one must be a full member of society and therefore have given express consent; but on any reading this does not imply that in order to give express consent one must have, or have the prospect of, possessing land.
- (4) Contrary to Parry's suggestion, it has been argued that inheritance of an estate is *not* "an act of express consent which makes a man a member of the political community." At most, in sections 116-117 Locke suggests that the inheritance of an estate *requires* an act of express consent (because it requires one to be a member of society).

In this essay I have examined in some detail—perhaps even in tedious detail!—Locke's views on express and tacit consent. However, given the importance of Locke's views on this subject, I believe that the results of

this investigation are of some substance. Although I have not endeavored to provide a philosophical critique of Locke's position, I have nevertheless tried to provide firmer foundations for such an enterprise. Clearly, any adequate philosophical critique of Locke's theory of consent must be based upon a proper understanding of the content and structure of his arguments. It has been shown, first, that some important aspects of Locke's discussion have been widely misunderstood, and second, that Locke's position is rendered somewhat more plausible and more coherent when these misunderstandings are removed (which is not, of course, to deny that a great many difficulties still remain). In this way, this examination of Locke's arguments does succeed in removing some of the heavier, darker clouds that have obscured Locke's doctrine of consent. An effort has been made to place Locke's discussion in the clearer light of the historical context of the contractarian social and political philosophies of the seventeenth century. From this perspective it is easier to see that Locke's understanding of express consent is no more obscure than it is original. It is also easier to see that in several important respects Locke's views are as inconsistent as they are misunderstood.

### NOTES

1. John Locke, *Two Treatises of Government*, ed. by P Laslett (Cambridge: Cambridge University Press, 1960).

2. For an influential and illuminating discussion of this issue, see John Dunn, "Consent in the Political Theory of John Locke," *The Historical Journal* (July 1967), 153-182. See also Dunn's *The Political Thought of John Locke* (Cambridge: Cambridge University Press, 1969), esp. chap. 10, and his more recent book *Locke* (Oxford: Oxford University Press, 1984), 49-52.

3. Dunn, "Consent in the Political Theory of John Locke," 166. Dunn asks, "[J]ust what sort of a performance is an 'express' or 'explicit' consent?" He replies, "There is no very clear answer to this question and it is a damaging lacuna in Locke's theory that there should be none. The problem remains that *Locke gives no instances of what he means by an express consent* except that of a landowner previously in a state of nature who joins himself to a commonwealth" (pp. 166-167, my emphasis).

4. Geraint Parry, *John Locke* (London: Allen & Unwin, 1978), 104. Parry continues, "Locke does give one instance of express consent which is attached to the ownership and inheritance of property. I share John Dunn's view that Locke is here giving one, admittedly salient, way of recognizing express consent, but that it is only one way and that there are others which Locke does not bother to specify." In a note on page 108, Parry suggests that his approach to Locke's doctrine of consent "is in basic agreement with that

of Dunn." However, it seems to me that in several respects Parry's account of Locke's doctrine differs from that which Dunn puts forward. See also Ian Hampsher-Monk, "Tacit Consent in Locke's Two Treatises," *Journal of the History of Ideas* (January 1979), 136: "It is the identification of express consent in otherwise legitimate polities that has presented, and I suggest still presents, such a knotty problem in Locke scholarship."

5. Thomas Hobbes, *Leviathan*, ed. by C. B. Macpherson (Harmondsworth: Penguin Books, 1968).

6. Samuel von Pufendorf, *De Jure Naturae et Gentium Libri Octo* (Lund, Sweden: 1672). Translated by Basil Kennett as *Of the Laws of Nature and Nations* (London: 1710).

7. Laslett, "Introduction" to the *Two Treatises*, 89.

8. Laslett, "Introduction," 89. For a relevant discussion see Dunn, *The Political Thought of John Locke*, chaps. 6-7

9. Laslett, "Introduction," 88. See Quentin Skinner, "The Context of Hobbes's Theory of Political Obligation," *Hobbes and Rousseau*, ed. by M. Cranston and R. S. Peters (Garden City, N. Y.: Anchor Books, 1972), 109-142. In this paper Skinner shows that Hobbes's impact on mid- and late-seventeenth century English political philosophy was considerable. The first critique of *Leviathan* to appear in print, in 1652, was Sir Robert Filmer's *Observations on Mr. Hobbes's Leviathan*. (Note that Locke refers to this work in the *First Treatise*, section 14.) It is worth remarking in this context that although it is important not to "exaggerate" the relationship between Hobbes's writings and the *Two Treatises*, it is equally important not to overreact to previous "distortions" by suggesting that there is no important connection between Hobbes's writings and the *Two Treatises*. It is one thing to suggest, plausibly, that Locke's *Two Treatises* should not be viewed as a response to Hobbes's writings; it is another to suggest, implausibly, that Hobbes's writings were not of great importance in the context in which Locke wrote the *Two Treatises*.

10. Hobbes, *Leviathan*, 193 (my emphasis).

11. Hobbes, *Leviathan*, 269 (my emphasis).

12. Hobbes, *Leviathan*, 268 (my emphasis). It is worth noting that in his *Observations on Mr. Hobbes's Leviathan* (sect. XIII), Filmer specifically refers to this passage of *Leviathan*. Sir Robert Filmer, *Patriarcha and other Political Works*, ed. by P. Laslett (Oxford: Blackwell, 1949), 246.

13. Laslett, "Introduction," 88.

14. Dunn, "Consent in the Political Theory of John Locke," 167-168. The following two passages are of some interest in this context:

God furnished [man] with language, which was to be the great instrument, and common tie of society (*An Essay Concerning Human Understanding*, III, 1, 1; my emphasis).

Lastly, those are not at all to be tolerated who deny the being of a God. Promises, covenants, and oaths, which are the bonds of human society, can have hold upon the atheist (*A Letter Concerning Toleration*).

These passages make clear that Locke regarded language as providing the "bonds" of society. Note also that in *De Jure Naturae* Pufendorf devotes an entire chapter to oaths, including oaths of allegiance. For an interesting discussion of the importance of oaths in seventeenth-century English society, see Christopher Hill, *Society and Puritanism in Pre-Revolutionary England* (London: Panther, 1969), Chap. 11, esp. sect. vi.

15. Dunn has argued in "Consent in the Political Theory of John Locke," 168, that we may interpret express consent as a "hypothetical event."

For all Locke's insistence on the explicitness of an express consent, it seems that what must be important is the disposition manifested by behavior, rather than any specific occasion. Men must be supposed expressly to consent to their membership in a given society, by their settled disposition to identify themselves as such.

I have serious reservations about this aspect of Dunn's interpretation. First, Locke in no way suggests that he has "dispositions" or "hypothetical events" in mind. Why should he describe a "disposition" or "hypothetical event" as constituting *express* consent? If Locke had held that express consent need not be "explicit," surely he would have felt constrained to provide us with a more detailed account of "what ought to be looked upon as [an express] consent." Indeed, Dunn's interpretation blurs the distinction between express and tacit consent that Locke is concerned to make. Second, I do not share Dunn's assumption that according to Locke native-born Englishmen who remain in England are necessarily *members* of (English) society, "Consent in the Political Theory of John Locke," 168. Contrary to Dunn, I believe that in respect of society such "native-born Englishmen" and resident aliens have a similar *status*: Namely, (1) they are subject to its laws and (2) they have the right to emigrate if they so wish. That is to say, like the resident alien such native-born Englishmen have never expressly consented (for such consent must be *explicit verbal consent*), but they do tacitly consent to obey the government. (Note that on Dunn's interpretation the native-born Englishman would lose his right to emigrate if he failed to emigrate when he came of age.)

16. John Plamenatz, however, is probably an exception to this. Although his remarks on this subject are rather vague, it does seem that he interprets express consent as simply verbal consent. See his *Man and Society* (London: Longman, 1963), Vol. I, 235, 238-239. Insofar as this is Plamenatz's interpretation, my remarks may be viewed as a defense of his interpretation.

17. Parry, *John Locke*, 106; my emphasis.

18. Parry, *John Locke*, 104-105.

19. Parry, *John Locke*, 107

20. This point is noted by C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962), 250.

21. Macpherson, *Political Theory*, 249-250.

22. Dunn, "Consent in the Political Theory of John Locke," 165-166.

23. In *The Political Theory of Possessive Individualism*, Macpherson argues that Locke develops a distinction between two classes of person in seventeenth-century English society. The landowning class, it is suggested, consents by way of express consent, whereas the landless class gives only tacit consent and therefore does not possess full membership of society. Macpherson's claim that "every full member of society is assumed to be a proprietor of land" is an important strut of his "possessive individualist" interpretation of Locke's political philosophy. On this see Dunn, "Consent in the Political Theory of John Locke," 165f and Parry, *John Locke*, 103-107

24. There is some disagreement about how successful Locke is in reconciling these claims. On this see Plamenatz, *Man and Society*, Vol. I, 226-227, and Dunn, "Consent in the Political Theory of John Locke," 163-165.

25. See Hampsher-Monk, "Tacit Consent," 136: "Locke is pointing out that express consent is a *precondition* for inheritance, not that inheritance is express consent, far less that only inheritors are to be taken as express consentors."

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